

CHAPTER 284

LABOR AND INDUSTRY

HOUSE BILL 19-1025

BY REPRESENTATIVE(S) Melton and Herod, Arndt, Benavidez, Buckner, Coleman, Duran, Esgar, Exum, Froelich, Galindo, Gonzales-Gutierrez, Hansen, Hooton, Jackson, Jaquez Lewis, Kipp, Kraft-Tharp, McCluskie, Mullica, Roberts, Singer, Sirota, Snyder, Sullivan, Tipper, Titone, Valdez A., Weissman, Becker;
also SENATOR(S) Foote and Rodriguez, Bridges, Court, Danielson, Donovan, Fenberg, Fields, Ginal, Gonzales, Lee, Moreno, Pettersen, Priola, Story, Williams A., Winter, Garcia.

AN ACT

CONCERNING THE TIMING OF AN INQUIRY INTO A JOB APPLICANT'S CRIMINAL HISTORY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Nearly one in three American adults has a criminal history, and in Colorado more than one million five hundred thousand individuals are included in the state criminal history record database;

(b) Previous involvement with the criminal justice system often creates a significant barrier to employment in that applicants with criminal histories are less likely to be considered for an available job when that information is included on an initial job application;

(c) Additionally, revealing a criminal history on an initial job application often results in an applicant's elimination from consideration;

(d) Children and families suffer when people with criminal histories are unable to work or work at jobs that are below their potential given their education and skills; people with criminal histories who experience unemployment or underemployment struggle to provide for their families and are more likely to depend on public assistance; and children are less likely to receive financial support in the form of child support when a parent has a criminal history;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(e) Removing job barriers for people with criminal histories helps the economy grow;

(f) In 2014, unemployment of people with criminal histories cost the United States economy between seventy-eight and eighty-seven billion dollars in annual gross domestic product;

(g) Military veterans who have experienced the criminal justice system often face additional hurdles in rejoining the workforce;

(h) Providing employment opportunities for people with criminal histories makes our communities safer because when people with criminal histories are gainfully employed, they are significantly less likely to reoffend; and

(i) Society expects adults who can work to seek and maintain employment, so it is vital that Coloradans with criminal histories have a chance to rejoin the workforce and become fully contributing members of their communities.

(2) It is the intent of the general assembly in enacting the "Colorado Chance to Compete Act" to:

(a) Provide people with criminal records with a more meaningful chance to compete for a job in the workforce and grow Colorado's economy;

(b) Promote safer communities;

(c) Allow employers to have access to complete information about a candidate's criminal history; and

(d) Protect an employer's ability to make whatever hiring decision the employer deems appropriate.

SECTION 2. In Colorado Revised Statutes, **add** 8-2-130 as follows:

8-2-130. Criminal history - limits on advertisements and applications - exceptions - enforcement - rules - short title - definitions. (1) **Short title.** THE SHORT TITLE OF THIS SECTION IS THE "COLORADO CHANCE TO COMPETE ACT".

(2) **Definitions.** AS USED IN THIS SECTION:

(a) "CRIMINAL HISTORY" MEANS THE RECORD OF ARRESTS, CHARGES, PLEAS, OR CONVICTIONS FOR ANY MISDEMEANOR OR FELONY AT THE FEDERAL, STATE, OR LOCAL LEVEL.

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(c) (I) "EMPLOYER" MEANS A PERSON THAT REGULARLY ENGAGES THE SERVICES OF INDIVIDUALS TO PERFORM SERVICES OF ANY NATURE. "EMPLOYER" INCLUDES:

(A) AN AGENT, REPRESENTATIVE, OR DESIGNEE OF AN EMPLOYER; AND

(B) AN EMPLOYMENT AGENCY, AS DEFINED IN SECTION 24-34-401 (4).

(II) "EMPLOYER" DOES NOT INCLUDE THE STATE, A LOCAL GOVERNMENT, OR A QUASI-GOVERNMENTAL ENTITY OR POLITICAL SUBDIVISION OF THE STATE.

(3) Criminal history information - limits on advertisements and applications - permissible uses. (a) ON AND AFTER SEPTEMBER 1, 2019, AN EMPLOYER WITH ELEVEN OR MORE EMPLOYEES, AND ON AND AFTER SEPTEMBER 1, 2021, ALL EMPLOYERS, SHALL NOT:

(I) STATE IN AN ADVERTISEMENT FOR AN EMPLOYMENT POSITION THAT A PERSON WITH A CRIMINAL HISTORY MAY NOT APPLY FOR THE POSITION;

(II) STATE ON ANY FORM OF APPLICATION, INCLUDING ELECTRONIC APPLICATIONS, FOR AN EMPLOYMENT POSITION THAT A PERSON WITH A CRIMINAL HISTORY MAY NOT APPLY FOR THE POSITION; OR

(III) INQUIRE INTO, OR REQUIRE DISCLOSURE OF, AN APPLICANT'S CRIMINAL HISTORY ON AN INITIAL WRITTEN OR ELECTRONIC APPLICATION FORM.

(b) AN EMPLOYER MAY OBTAIN THE PUBLICLY AVAILABLE CRIMINAL BACKGROUND REPORT OF AN APPLICANT AT ANY TIME.

(4) Exceptions. THIS SECTION DOES NOT APPLY TO A POSITION BEING OFFERED OR ADVERTISED IF:

(a) FEDERAL, STATE, OR LOCAL LAW OR REGULATION PROHIBITS EMPLOYING FOR THAT POSITION A PERSON WITH A SPECIFIC CRIMINAL HISTORY;

(b) THE POSITION IS DESIGNATED BY THE EMPLOYER TO PARTICIPATE IN A FEDERAL, STATE, OR LOCAL GOVERNMENT PROGRAM TO ENCOURAGE THE EMPLOYMENT OF PEOPLE WITH CRIMINAL HISTORIES; OR

(c) THE EMPLOYER IS REQUIRED BY FEDERAL, STATE, OR LOCAL LAW OR REGULATION TO CONDUCT A CRIMINAL HISTORY RECORD CHECK FOR THAT POSITION, REGARDLESS OF WHETHER THE POSITION IS FOR AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR.

(5) Enforcement - notice and records retention rules. (a) THIS SECTION DOES NOT CREATE OR AUTHORIZE A PRIVATE CAUSE OF ACTION BY A PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION AND DOES NOT CREATE A PROTECTED CLASS UNDER SECTION 24-34-402. THE PENALTIES SET FORTH IN THIS SUBSECTION (5) ARE THE SOLE REMEDY FOR A VIOLATION OF THIS SECTION. THE ISSUANCE OF A WARNING, ORDER, OR PENALTY FOR A VIOLATION OF THIS SECTION IS NOT EVIDENCE OF A VIOLATION OF PART 4 OF ARTICLE 34 OF TITLE 24.

(b) A PERSON WHO IS AGGRIEVED BY A VIOLATION OF THIS SECTION MAY FILE A COMPLAINT WITH THE DEPARTMENT. IF THE DEPARTMENT RECEIVES A COMPLAINT WITHIN TWELVE MONTHS AFTER THE ACT THAT IS ALLEGED TO VIOLATE THIS SECTION OCCURRED, THE DEPARTMENT SHALL INVESTIGATE THE COMPLAINT UNLESS THE DEPARTMENT DETERMINES THAT THE COMPLAINT IS WITHOUT MERIT.

(c) AN EMPLOYER THAT VIOLATES THIS SECTION IS LIABLE FOR ONE OF THE FOLLOWING PENALTIES:

(I) FOR THE FIRST VIOLATION, A WARNING AND AN ORDER REQUIRING COMPLIANCE WITHIN THIRTY DAYS;

(II) FOR THE SECOND VIOLATION, AN ORDER REQUIRING COMPLIANCE WITHIN THIRTY DAYS AND A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS; OR

(III) FOR A THIRD OR SUBSEQUENT VIOLATION, AN ORDER REQUIRING COMPLIANCE WITHIN THIRTY DAYS AND A CIVIL PENALTY NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

(d) AN EMPLOYER IS NOT SUBJECT TO PENALTIES FOR A SECOND OR SUBSEQUENT VIOLATION UNDER SUBSECTION (5)(c) OF THIS SECTION UNLESS THE EMPLOYER:

(I) FAILED TO COMPLY WITH AN ORDER REQUIRING COMPLIANCE WITHIN THIRTY DAYS AFTER THE DATE OF THE ORDER; OR

(II) COMPLIED WITH AN ORDER REQUIRING COMPLIANCE WITHIN THIRTY DAYS BUT THEN COMMITTED A VIOLATION OF THIS SECTION MORE THAN THIRTY DAYS AFTER THE ISSUANCE OF THE ORDER.

(e) THE DEPARTMENT SHALL ADOPT RULES REGARDING PROCEDURES FOR HANDLING COMPLAINTS FILED AGAINST EMPLOYERS ALLEGING A VIOLATION OF THIS SECTION, INCLUDING:

(I) REQUIREMENTS FOR PROVIDING NOTICE TO AN EMPLOYER ALLEGED TO HAVE VIOLATED THIS SECTION; AND

(II) REQUIREMENTS FOR RETAINING AND MAINTAINING RELEVANT EMPLOYMENT RECORDS DURING A PENDING INVESTIGATION.

SECTION 3. Appropriation. For the 2019-20 state fiscal year, \$38,113 is appropriated to the department of labor and employment for use by the division of labor standards and statistics. This appropriation is from the employment support fund created in section 8-77-109 (1)(b)(I), C.R.S., and is based on an assumption that the division will require an additional 0.6 FTE. To implement this act, the division may use this appropriation for program costs related to labor standards.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to acts committed on or after the applicable effective date of this act.

Approved: May 28, 2019